Supreme Court, U.S.
FILED
95-639 OCT 16 1995
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

THE IN RE GENE FLINN, ESQ.
FEDERAL CASE. NO. 94-5101

GENE FLINN, ESQ., et al.,

Petitioners,

v.

LAWRENCE PLUMMER, a non certified opponent designated by the Circuit as Appellee

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

THE GENE FLINNS / Unit
In Proper Persons
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September 30th, 1995

28 pp

QUESTIONS PRESENTED

Whether the U. S. District Courts are constitutionally (or statutorily) empowered to authorize Standing of an independent counsel to prosecute cases.

Whether a non appearance 'appearing' counsel who lacks a Presidential appointment in becoming the District's U. S. Attorney and who fails to comply with such established Rules and statutory requirements for an otherwise identifiable Standing nullifies a District Court conducted In Re proceeding disbarring Petitioner.

LIST OF PARTIES

Contrary to Constitutional Due Process, there has never existed a Federal Complaint, nor any other document informing Petitioner of (1) who made the charges and (2) of what charges were being lodged against him as an attorney enrolled in the U. S. Judicial System.

The Petitioner stands as the only Party to these so described In Re proceedings.

The Respondent, LAWRENCE PLUMMER, is represented by a LAWRENCE KAINE, ESQ., though never a party, as more fully described in the requested Writ stated hereafter.

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28 U.S.C. §2101(c) 2

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FEDERAL RULES OF CIVIL PROCEDURE

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New York Chinese TV Programs, Inc. v. U.E. Enterprises, 153 F.R.D. 69, 71 (S.D. N.Y. 1994) 10

New York News, Inc. v. Kheel, 972 F.2d 482 (2nd Cir. 1992 10

United States v. Busher, 817 F.2d 1409, 1412 (9th Cir. 1987) 14

United States v. Wunsch, 54 F.3d 579 (9th Cir. 1995) 10

United States Securities & Exchange Commission v. ESM Government Securities, Inc., 645 F.2d 310 (5th Cir. 1981) 7

The Petitioners pray that a Writ of Certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Eleventh Circuit entered in the above entitled proceeding August 7, 1995, and the action taken by this Court on August 14, 1995 rejecting Petitioner's right to file a response, thereto, upon rehearing.

OPINION BELOW

The Opinion of the Court of Appeals for the Eleventh Circuit Court and the subsequently issued Court Memorandum are unpublished and is reprinted in the appendix hereto.

JURISDICTION

This Court has jurisdiction based upon constitutional questions

presented pursuant to the Fifth, Sixth Amendments as applied to the State of Florida initiated action through the Fourteenth Amendment to the United States Constitution, and the Federal Rules of Civil and Appellate Procedure. This Petition for Writ of Certiorari is filed under the provisions of 28 U.S.C. 2101(c) and (d). The Petition has been filed within the time allowed by law.

PROLOGUE TO STATEMENT OF THE CASE

Over Memorial Day weekend of 1990, the psychiatrist who had testified just a year before to the Referee that Petitioner suffers from irreversible brain damage, was found dead with a bullet in the brain. Dr. Arthur Stillman had agreed for 'flipping' to becoming the Star Witness before the impaneled Federal Grand Jury investigating Operation 'Court Broom' involving those who had engaged in an [18 U.S.C.] Section 1962(c) racketeering enterprise to eliminate/liquidate, among others, the Flinns and other enforcement personnel, including a key Government informant. Stillman had been shot with a 38 calibre, and what had been stuffed in his pocket obviously as a pro forma Mafia warning to the

investigator, William Santner, and to Petitioner was a newspaper article on the Bar Grievance pertaining to "Gene Flinn - Former Legislator".

This was a jolt to the Bureau and the reason for one (1) State Judge going free. Moreover, Florida Bar Counsel, Paul Gross, had exparteed the Referee informing him of the probe of State officials on March 22, 1989 in a transcript, beginning "Your Honor, I don't know if you want this on the Record". There is where it ceases. The Referee rules there exist no corruption prior to that trial.

Thereafter Petitioner sought the issuance of federal subpoenas, as the Respondent in 1989 had been excused from testifying by the Referee. This request has been repeatedly denied and, on one occasion, by the

Circuit's Chief Judge and as late as October 12, 1994. As a consequence, the Petitioners suffer further setbacks in their top notch investigator being gunned down; Coordinator Patricia Marshall Smith being shot at on June 27, 1993, and, additionally, for this District's (then) U. S. Attorney, Dexter Lehtinen, refusing to prosecute two (2) 'Hobbs' cases [18 U.S.C. §1951, et seq.] prepared for presentment by the ATF/Bureau in 1989, which 'alert' to the widespread drug crime/corruption in the tri-state area was sounded by Petitioner, as stenographically recorded, in testifying before a U. S. Magistrate Judge, on June 25, 1990.

PRECIPITATING EVENTS AND STATEMENT OF CASE

The problem of dealing with Petitioner up front is that he lacks a criminal record, even a police blotter notation. Further, such circumstances are exacerbated by his [their] recommending successes. The Flinns were the Florida managers and a security attache' to LBJ, and 'Bobby' Kennedy in 1960. Here, Petitioner, joined by others, recommends Charles 'Bud' Stack to fill the vacancy created by a Circuit Judge taking Senior Status. The Florida Bar which had its own groomed candidate was ignored. The President nominated Stack for the Eleventh.

In what would be termed as a move towards a 'full circle exoneration', Petitioner attempts to take Respondent's deposition,

who obtains a protective order, and proceeds to relitigate the State entered grievance Order.

Petitioner loses every ruling and each of the appeals, in a replay from the dire country-wide collapses threatening the stability of the national banking system surfacing in the mid '80s; namely, those precipitated by a firm of attorneys called Arky, Freed (Florida, Ohio, and Tennessee), by Marvin L. Warner (Florida and Ohio), and Jacob F. Butcher and a brother, C.H. (Tennessee and Arkansas). Petitioner (then) aligned with Commissioner Gray of the United States Securities and Exchange Commission both lose every District Court ruling, and the SEC loses before the Circuit in Flinn v. ESM, Case No. 84-0014 (1984), and SEC v. ESM, 645 F.2d

310 (5th Cir. 1981). That series of decisions/opinions cost the U. S. Taxpayers Seven Hundred Million; this series - if left unmasked will predictably surpass the One (1) Billion Dollar mark for the unjust enrichment of three (3) unsavory segments of society.

REASON FOR GRANTING WRIT AND ARGUMENT

The Bill of Rights issues stemming from the State unwarranted interference obstructing Federal Constabulary matters are here presented as being two fold. First, a rejection of comity and secondly, an interloper's 'presence' in the case as a sequel. A Judge, after a hearing, finds the Petitioner to be in compliance with the District Court's issued Rule to Show Cause, following Local Rule III. Standing is examined and Petitioner is requalified to continue practicing. The decision was based upon "a miscarriage of Justice" by the State authorities. As a result, the Respondent 'appears' with the avowed objective of prosecuting the Petitioner to reverse that ruling but clearly lacks standing. Further,

by the failing to file a formal notice of appearance, as always required, Respondent's attorney avoids any disciplinary proceedings and for his client (Plummer) any problems inherent in a service of process. a discovery deposition, and most assuredly the lodging of a counterclaim. Compare: U.S. v. Wunsch, 54 F.3d 579 (9th Cir. 1995). Therefore, Respondent and his attorney elude any definition for a defined legal category, or right of action.

Respondent in a cover-up never files an application with the three (3) Judge Panel, pursuant Rule 24, Fed.R.Civ.P., to reveal this ulterior purpose. See, also, New York Chinese TV Programs, Inc. v. U.E. Enterprises. 153 F.R.D. 69, 71 (S.D. N.Y. 1994); New York News, Inc. v. Kheel, 972 F.2d 482 (2nd Cir. 1992). With these

contrivances in place, the Chair Judge provided Respondent, who is there without portfolio, a (In Re) forum for engaging in protracted litigation over a four (4) years span. Here the interloper further becomes the de facto U.S. Attorney. In such recognition, Respondent is authorized to utilize all of AUSA tools, including drafting and the mailing out of official notices which the Court customarily does and to petition the Chair Judge to enter a further Rule to Show Cause to trigger a recommendation at this juncture adverse to Petitioner by the Committee.

By statute referencing 'an inferior officer', only the District's U.S. Attorney may prosecute accused individuals in a District Court. The one exception being the Circuit Court of Appeals for the District

of Columbia which is extraordinarily empowered by Congress to appoint an Independent Counsel upon request of the Attorney General. One such outside prosecutor was not asked for here, and Respondent's Lawyer is not a former Circuit Court of Appeals Judge. Moreover, there have been two (2) [28 U.S.C.§ 546] 'acting' U.S. Attorneys occupying the office for this (Southern) District during this period frame. Neither of the interim serving Attorneys, nor the (now) permanent replacement have sought permission leading to leave for intervention, and the reason being is that their lawful role had been usurped by Respondent. The fallout is Petitioner relinquishes a Public Sector I.R.C. 501(c)(6) because disbarment will be the first question of him upon cross examination.

CONCLUSION

These sequel events akin to what had taken place on the State level constitute a second miscarriage of Justice.

In the absence of a Presidential appointment, no amount of exercised authority by a District Court Judge will create the position of independent counsel for the prosecution of persons sought to be eliminated from the legal/investigative (public) sector. This aligned (or integrated for services) enforcement officer has demonstrated expertise' in Titles 18 and 26 matters, having received kudos, and as disclosed here for the first time in balancing competing interests. One such is, infra.

> Early on a Saturday evening, Flinn [a Title 26 Specialist, who has

since nailed James Robert Gailey, this District's Public Defender, for an out of state Grand Jury indictment for defrauding the Atlanta IRS, and the Administrative Offices of the U. S. Courts grounded upon a United States v. Busher, 817 F.2d 1409, 1412 (9th Cir. 1987) conducted field probe], was in attendance at a meeting in the Depository Room located in the U. S. Attorney's Office (Stanley Marcus/Leon Kelner) at 155 South Miami Avenue. Petitioner is shown documents and thereupon began reviewing evidence with CID agents in the 36 Million Dollar

tax fraud case which trial was to begin the following week. Flinn was assigned to seek out defense attorney Barry Garber (now a U. S. Magistrate Judge), whom he finally locates seated in a restaurant on the corner of North Kendall Drive and SW 78 Avenue. He interrupts his former residential neighbor's dinner to extol the strong Government case. The Defendant shortly thereafter 'cops a plea' sparing District Judge Lenore Nesbitt and the AUSA Team a six (6) week long trial. Because of Petitioner, et al., closing the deal, the U. S.

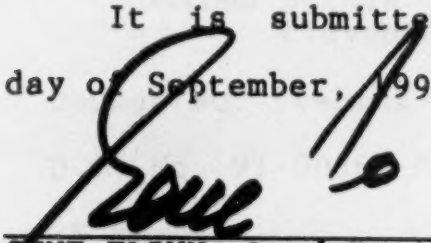
> Taxpayers were benefited through a recoupment of millions in found funds, fines, and forfeitures.

Upon closing with Respondent's mission completed, another member of the [18 U.S.C.] Section 1962(c) and (d) Enterprise takes up the matter with the Chief Judge, who, without a further hearing, disbars Petitioner on October 24, 1994. Consequently, the targeted Cali (cartels), the targeted Foreign based/trained terrorists and the (probed) subject/targeted Tax Cheats prevail in the second round through a perpetrated 'reverse targeting' of Petitioner/Unit.

WHEREFORE, the case and all orders accompanying, including denials of subpoenas and for disbarment should be reversed, and remanded with

instructions directed to fees and costs entitlements and, further, to reinstate Petitioner for legal practice retroactively.

It is submitted this 30th day of September, 1995.



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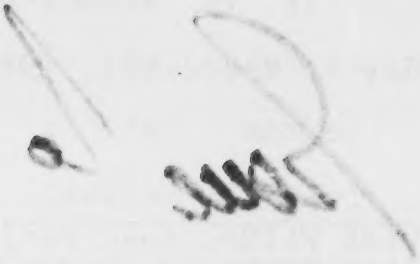

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
United States Court of Appeals
Eleventh Circuit

Docket NO. 94-5101

D.C. No. 91-00868-CIV-CCA

IN RE:

GENE FLINN,

Petitioner.

On Appeal from the Umited States District Court for the Southern District of Florida

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Order Entered

August 7, 1995

BEFORE: TJOFLAT, Chief Judge, BIRCH and DUBINA, Circuit Judges.

BY THE COURT:

Movant's motion for attorneys

fees is granted as to entitlement. This matter is REMANDED to the district court for a hearing on the amount of fees to be awarded to Movant.

UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

56 Forsyth Street, N.W.

Atlanta, Georgia 30303

Miguel J. Cortez
Clerk

In Replying
Give Number of
Case And Names
of Parties

AUGUST 14, 1995

MEMORANDUM TO ADDRESSEES:

RE: 94-5101 Flinn, Gene, IN Re:

DC DKT NO.: 91-00868 CIV-CCA

The following action has been taken in the referenced case:

Sincerely,

/s/ Miguel J. Cortez

MIGUEL J. CORTEZ,

Clerk

Reply To: Cecelia Williams (404) 331-3833

*The attached briefs are being returned

to you unfiled by this court. Please note that case number 94-5101 was closed on 5/25/95.